

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY LS9908111FDR
PROCEEDINGS AGAINST

KENNETH R. ANDREWS	FINAL DECISION AND ORDER
RESPONDENT.	LS9908111FDR
	96 FDR 034
	98 FDR 027
	98 FDR 031

----The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

*Kenneth R. Andrews
c/o Michael T. Schoendorf, Attorney
394 Williamstowne
Delafield, WI 53018*

*Division of Business Licensure and Regulation
Funeral Directors Examining Board
P.O. Box 8935
Madison, WI 53708-8935*

*Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935*

The Funeral Directors Examining Board having considered the Stipulation Agreement Annexed-hereto of the parties, in resolution of the captioned-matters makes the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED pursuant to jurisdiction and authority granted to the Board, that the Stipulation Agreement annexed hereto, filed by Complainant's Attorney, shall be and hereby is incorporated, made and ordered the Final Decision and Order of the State of Wisconsin, Funeral Directors Examining Board.

Let a copy of this Order be served on Respondent by certified mail.

Dated this 11th day of August, 1999.

Signed: Roy Pfeffer, Chair

STATE OF WISCONSIN
BEFORE THE FUNERAL DIRECTORS EXAMINING BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

KENNETH R. ANDREWS,
RESPONDENT.

STIPULATION

96 FDR 034

98 FDR 027

98 FDR 031

Respondent Kenneth R. Andrews (Andrews), his attorney, Michael T. Schoendorf, and Complainant's attorney, Henry E. Sanders, Division of Enforcement (Division), having reached agreement for disposition of the captioned-matters, stipulate and agree as follows:

I. Respondent Andrews of N9078 Pickeral Jay Road, East Troy, Wisconsin 53120, is and was at all time material to the complaints, licensed as a funeral director, and has been so licensed under the provisions of Chapter 445, Wis. Stats., since June 30, 1980.

a. Respondent is not currently active or associated with any funeral establishment.

2. This Stipulation, dispositive of investigative complaints #96 FDR 034,

98 FDR 027 and #98 FDR 03 1, shall be submitted to the Funeral Directors Examining Board

(Board) for approval and disposition of the matters. If the terms of the Stipulation are not

acceptable to the Board, then the parties shall not be bound by any of the provisions of the

Stipulation.

3. Respondent has been advised of his right to public hearings on each and every allegation of the complaints, but hereby freely and voluntarily waives his right to hearings in these matters on the condition that all provisions of this Stipulation be acceptable to and approved by the Board.

a. Respondent further agrees to waive any appeal of the Board's Final Decision and Order adopting the Stipulation agreement.

4. On May 23, 1996, in case #96 FDR 034, the city of Milwaukee provided a written response to various parties relating to the city's previous Request for Proposals (RFP) for disinterment and reinterment of human remains and cremains that were interred at Fairview Mausoleum. The city intended to demolish Fairview Mausoleum after completion of removal and re-interment of all human remains contained in the mausoleum.

5. Respondent apparently contracted with the city to perform specific services relating to removal of the Complainant's relative's remains from Fairview Mausoleum, and re-burial of those remains in Evergreen (Quarterline) Cemetery in East Troy. On January 17,

1996, prior to the release of the RFP, Respondent submitted a re-revised proposal to the city of Milwaukee for removal and transporting of the four human remains/cremains from Fairview Mausoleum to Evergreen (Quarterline) Cemetery. Respondent also indicated that he would proceed as soon as clearance was received from the city of Milwaukee. Apparently, approval for the Respondent was received to proceed, because on February 14, 1996, Respondent submitted two completed billings to the city for payment for his services. Respondent indicated that he had accomplished the removals on February 10, 1996.

6. On November 20, 1996, the Department received a complaint from Virginia Thurow indicating that Respondent had been paid by the city of Milwaukee to provide specific services relating to the disinterment of her relatives from Fairview Mausoleum, and re-interment in Evergreen (Quarterline) Cemetery. Mrs. Thurow did not indicate when Respondent was paid by the city of Milwaukee to provide the services. However, documents in the case file reflect that the city would have paid Respondent sometime after receipt of his completed final billing invoice dated February 14, 1996, that itemized the services provided, and advised the city that he had accomplished the disinterment and re-interment of Mrs. Thurow's relatives on February 10, 1996. Mrs. Thurow indicated that Respondent had not performed the services that he had agreed and contracted with the city to provide. Mrs. Thurow indicated that she wrote letters to Respondent regarding the services he had agreed to perform, and made numerous telephone calls to him which he did not respond to. Mrs. Thurow also indicated that officials with the city of Milwaukee made numerous telephone calls to Respondent regarding the matter, but Respondent did not respond to their calls either. Mrs. Thurow indicated that after Respondent failed and/or refused to respond to repeated inquiries, the city advised her to file a complaint with the Department of Regulation and Licensing.

7. On February, 20, 1997, Investigator's Supervisor Michael Whalen contacted Respondent via a ten (10) day letter, per a request from the Funeral Directors Examining Board's Screening Panel, to attempt to resolve the matter prior to the Division of Enforcement making a decision regarding opening a complaint for investigation against Respondent. Whalen asked Respondent to provide a detailed written response and copies of all relevant documents. Respondent's response to Whalen's February 20, 1997, letter was received in the Division on March 12, 1997, but Respondent merely submitted a brief response and one photograph, and did not submit any documents relating to the services he had been paid by the city to perform.

8. On April 2, 1997, Investigator Kelley Sankbeil was assigned to conduct the investigation. Sankbeil contacted Respondent via a letter requesting a written narrative response and all relevant documents regarding the complaint. Sankbeil mailed two other mailings to Respondent with the third letter being mailed certified mail after Respondent did not respond to the second letter. The certified mailing was returned to the Division by the post office indicating that Respondent did not claim the letter after two attempts were made to deliver it.

9. On December 11, 1997, the case was reassigned from Sankbeil to Investigator Willie Garrette. On December 17th Garrette telephoned Respondent and left a message asking Respondent to return his call. After Respondent did not return Garrette's phone call, Garrette followed up with another phone call to Respondent on December 19th, and reached him and

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discussed the complaint as well as Respondent's unresponsiveness and failure to cooperate with the investigation. Garrette requested from Respondent, a written narrative response to Sankbeil's third letter to him of November 5th, and all relevant documents. Garrette requested that Respondent also contact Mrs. Thurow to advise her of his intentions, and to copy him with the letter within ten (10) days.

10. On December 30, 1998, after Respondent failed to provide the requested information and/or cooperate with the Department's investigation, a Subpoena Duces Tecum was mailed to the Walworth County Sheriff's Department for service on Respondent regarding Mrs. Thurow's complaint, and two other complaints, #98 FDR 027 and #98 FDR 031, that were received in the Division during November, 1998, which Respondent also failed to respond to.

11. On January 11, 1999, the Sheriff's Department served the subpoena on Respondent requiring him to appear at the Department on January 28, 1999, at 10:00 a.m. Three attachments were included with the subpoena spelling out specifically what documents and records Respondent was required to produce, including a detailed written narrative response for each complaint.

12. On January 22, 1999, Garrette attempted to contact Respondent via two telephone calls to discuss the documents that he would be required to produce on January 28th, pursuant to the subpoena. On both occasions, Respondent's telephone was answered by an answering service. Garrette was advised by the answering service that Respondent had indeed received the first message that was left with the service, but he had not returned either of Garrette's calls.

13. On January 28th, the date Respondent was to have appeared and produce the subpoenaed documents, Garrette received two voice mail messages from attorney Michael Schoendorf advising that Respondent had just contacted him that morning for the purpose of representation regarding the three pending complaints. Garrette did eventually talk to Schoendorf, and requested that he contact Henry Sanders, attorney assigned to the complaints, to request the extension.

14. Attorney Sanders returned a telephone call to Schoendorf that afternoon and was advised by Schoendorf that he was representing Respondent. Schoendorf informed Sanders that he had received a cellular phone call from Respondent just prior to the time (10:00 a.m.), that Respondent was scheduled to appear at the Department.

15. On February 5th, Respondent appeared at the Department in person and with counsel, attorney Schoendorf. The subpoena required Respondent to provide a written response regarding each case and to provide various records and documents. When Respondent appeared at the Department, he did not produce any of the documents that were requested pursuant to the subpoena and attachments. Respondent did provide brief written statements regarding each of the complaints.

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16. Relating to complaint #96 FDR 034, Respondent was in possession of Mrs. Thurow's relative's cremains from February 10, 1996, until May 14, 1999, when he delivered the cremains, markers and funds covering all expenses to Heritage Funeral Home.

17. Relating to complaint #98 FDR 027, on November 26, 1997, Respondent entered into a contract with a consumer and was paid in full by the consumer, to purchase and install a memorial marker for the consumer's son's grave. When Respondent entered into the contract with the consumer, he was also the owner of Southern

Kettle Moraine Markers, the company that contracted to provide and place the memorial marker. Subsequently, and in order to get closure on the death of his son, the consumer paid Gehl Memorials to provide the services that Respondent had failed to perform. The consumer indicated that he had repeatedly telephoned Respondent, had left telephone messages for Respondent and sent a letter to Respondent by certified mail, but Respondent did not return any of the consumer's calls, or respond to the certified mailing.

18. On January 28, 1999, Respondent wrote the consumer and reimbursed the consumer \$150.00 for the marker, but he did not make any effort to bring closure to the matter for the consumer until after having been served with the subpoena.

19. Relating to complaint #98 FDR 03 1, this complaint was filed by a consumer because Respondent was non-responsive to the consumer's inquiries relating to whether or not Respondent had performed embalming on the deceased's mother, and questions regarding the funeral bill and final charges. The consumer indicated that he had called Respondent on numerous occasions, but Respondent did not return any of those phone calls. Respondent admitted that he had to reimburse the consumer because he, or someone working at his funeral establishment threw away the deceased's clothing prior to consulting with the consumer to obtain authorization to do so.

20. Based upon the above enumerated facts and series of occurrences, Respondent has variously violated Secs. FD 3.02(9)(10), Wis. Adm. Code, Unprofessional conduct. (9) Engaging in misleading or deceptive conduct in the conduct of business or the profession; (10) Failing to demonstrate respect for the sanctity of human remains or for the feelings of individuals involved in the grieving process; Sec. HFS(2), Wis. Adm. Code. The funeral director shall return clothing removed from a dead human body to the family or other appropriate individual. Any soiled clothing shall be disinfected and sanitized before it is returned.

21. Based upon the above and in settlement of these matters, Respondent hereby consents, accepts and agrees to pay the Department \$1,000.00 as part assessment of costs, and to be suspended for a period of two (2) weeks (14 days), commencing at the point of if and when Respondent shall commence active practice as a funeral director.

22. Within five (5) days of receipt of the Board's Final Decision and Order adopting the Stipulation, Respondent shall submit all funeral directors licenses/certificates previously issued to him, to the departmental monitor.

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Michelle Neverman

Monitor

Division of Enforcement

P.O. Box 8935

Madison, WI 53708-8935

23. If and when Respondent is eligible for license renewal, his licenses/certificates will be returned to him and he may commence the practice of funeral directing, if his license/certificates have not expired. If his licenses have expired, then he will have to meet the requirements of license renewal.

24. The \$ 1,000.00 part assessments of costs shall be made payable by cashier's check or money order, made payable to the Department of Regulation & Licensing, and shall be paid within three (3) months of the date of the Board's execution of the Final Decision and Order, and submitted to the departmental monitor, Michelle Neverman, supra.

25. If Respondent shall fail to pay the part assessment of costs as ordered, or fail to get a written extension from the Board to pay same, then he shall be considered to be in violation of the Board's order, and may be subjected to further discipline.

26. Respondent and Complainant's Attorney Sanders agree that this Stipulation Agreement may be incorporated into the Board's Final Decision and Order adopting the Stipulation Agreement.

27. Respondent further agree that Complainant's attorney, Sanders and the Case Advisor assigned to the complaints, may appear at any closed deliberative meeting of the Board with respect to the Stipulation, but those appearances will be limited solely to clarification, justification, and to statements in support of the Stipulation and for no other purpose.

Signed: Kenneth R. Andrews,

August 9, 1999

Respondent

Date

Signed: Henry E. Sanders,

August 10, 1999

Complainant's Attorney

Date